The modern view is that a wife who separates from her husband with just cause may take the parties' children with her and establish a new domicile for herself and the children in another state if by statute the father and mother are joint guardians of the children. Restatement of Conflict of Laws, Sec. 32; 8 Cornell L. Q. 104, at page 111; Beale, Conflict of Laws, (1935) pages 215-216; 10 Law and Contemporary Problems, 822; Ex Parte Bryant (1922) 106 Ore. 359, 210 Pac. 454; Byers -vs- Superior Court, 61 Ariz. 284, 148 Pac. (2) 199; Worden -v- Worden (1949) 148 Tex. 356, 224 S.W. (2) 187. The Minnesota decision in Cummiskey -v- Cummiskey (1961) 259 Minn. 427, 107 N.W. (2) 864 indicates approval of this rule although the point was not directly involved there. M.S.A. Sec. 525.54 seems to recognize that the father and mother are equally the natural guardians of their minor children.

In view of the foregoing rulings it appears that the domicile of the parties' children was established to be in Minnesota before their wrongful seizure by the defendant.

The decision of our Minnesota Supreme Court in the recent Glasier case appears to recognize that a surreptitious removal of children by one of the parents does not transfer their domicile out of the State even though there is no court order concerning their custody in existence when the children are so removed. The Glasier case is possibly distinguishable on the basis that there was an ex parte order giving custody to the mother in effect while the father was in route to Minnesota to establish a new domicile for them. However, it is to be noted that in the Glasier case the defendant was not served with process until December 24th and presumably by that date he had arrived in Minnesota with the children with the intention of making Minnesota the new domicile of both himself and the children. Consequently this Minnesota decision appears to support directly the ruling here made.

Another Minnesota decision In Re Guardianship of Kowalke (1950) 232 Minn. 292, 46 N.W. (2) 275, in note 16 at page 310, says that a parent who abandons a child forfeits all right to change the child's domicile. It could with equal logic be said that a parent who attempts through fraud and violence to change the domicile of children will not be recognized to have the right to do so in an equitable proceeding such as this. My own extensive research and the research of counsel have failed to reveal any decisions holding to the contrary of my ruling here. The following decisions from other jurisdictions appear to support in principle the ruling which I have made: White -vs- White, (1913) 77 N.H. 26, 86 Atl. 353; Worden -vs- Worden, (1949) 148 Tex. 356, 224 S.W. (2) 187; Conley -vs- Conley, (1949) 324 Mass. 530, 87 N.E. (2) 153; Breene -vs- People, (1911) 51 Col. 342, 117 Pac. 1000; Shippen -vs- Bailey, (1946) 303 Ky. 10, 196 S.W. (2) 425; Re Hubbard, (1880) 82 N.Y. 90.

In the Glasier case our Court said:

> "We need say only that the preferred forum in which to try the issues raised thereby must of necessity be in the place of the parties' actual residence and domicile, where they have lived their married lives, established their home, and raised their children."

In this case if the defendant can establish that he and the children are now domiciled in the District of Columbia and that they lived their married lives there, then perhaps the court might later conclude that the parties should be referred to the courts of the District of Columbia for determination of custody. However, as indicated above, the defendant has not shown that he now resides in the District of Columbia and in fact has indicated this is not true. His total failure to show where he is domiciled leaves the Court in doubt as to whether his domicile is potentially a jurisdiction where custody may properly be determined. Absent some showing by the defendant of a preferred

forum for trial of the issue, it would appear that the domicile of the plaintiff where she presumably has lived in the past with her parents is the preferred forum. It is regrettable and is attributable to the defendant's fault that this court is not advised as to the appropriate forum for determination of custody. A Court must decide upon an appropriate forum for determination of custody because as said in the MacWhinney -vs- MacWhinney (1956) 248 Minn. 303, 79 N.W. (2) 683: "No young child should be made the victim of a tug-a-war between parents or between the courts of two conflicting jurisdictions."

Ordinarily custody of very young children is awarded to the mother. Johnson -vs- Johnson (1947) 223 Minn. 420, 27 N.W. (2) 289. The defendant's conduct in seizing these two young children from the mother should not be condoned by the courts since it is manifestly in the interest of such young children that they should be in the custody of their mother. Under M.S.A. 518.17 and the decision in Atwood -vs- Atwood (1949) 229 Minn. 333, 39 N.W. (2) 103, it appears that the Court may properly determine custody of the children in this proceeding wherein separate maintenance is sought.

Dated: September 9, 1965.

/s/ DANA NICHOLSON,
Judge of District Court.

APPENDIX B

Order and Memorandum Denying Petition for Rehearing Filed November 15, 1965

STATE OF MINNESOTA, COUNTY OF HENNEPIN
DISTRICT COURT, FOURTH JUDICIAL DISTRICT

Case No. 612151

PAMELA H. WILLMORE, *Plaintiff*,

v.

DANIEL E. WILLMORE, *Defendant*.

ORDER DENYING PETITION FOR REHEARING AND AFFIRMING ORDER OF SEPTEMBER 9, 1965

On November 9, 1965, the undersigned heard the defendant's Petition for Rehearing wherein the defendant sought an order setting aside the order dated September 9, 1965, and granting leave to defendant to submit new and further affidavits in support of defendant's Motion for Summary Judgment.

Counsel appearances were: Ira C. Peterson, Jr., for the defendant and Raymond C. Ploetz for the plaintiff.

The Court having heard the arguments of counsel and having considered the new affidavits submitted at the hearing on November 9, 1965, on all the files, records, and proceedings herein,

IT IS ORDERED that defendant's Petition for Rehearing is denied,

IT IS FURTHER ORDERED that the Court's order herein dated September 9, 1965, shall continue in effect, and

IT IS FURTHER ORDERED that the defendant shall have 20 days from the date of this order within which to file an answer to the plaintiff's complaint with respect to Paragraphs I, II and IX of the prayer for relief in the plaintiff's complaint.

The Court hereby certifies that the questions involved in this Petition for Rehearing and in the previous motion of the defendant for summary judgment are important and doubtful.

The attached memorandum is made a part of this Order.

/s/ DANA NICHOLSON
Judge of District Court

MEMORANDUM

In connection with the Petition for Rehearing, the defendant has made a purported showing by way of affidavit that his and the children's residence and domicile have been in Washington, D. C., since he seized the children from the plaintiff. This showing should have been made in connection with the defendant's original motion for summary judgment and it is doubtful whether the Court can consider this showing on the present Petition for Rehearing.

Defendant's affidavit showing in this respect conflicts with the showing by affidavit of his counsel that the defendant's residence has been in Pocatello, Idaho. This creates a conflict which is sought to be resolved by defendant's affidavit that his counsel was in error.

Particularly in view of the conflict in affidavits referred to above, the Court considers that defendant's showing by way of a conclusion of law as to his and the children's residence and domicile in the District of Columbia is insufficient. The Court considers that the defendant should have made a showing as to the actual residence address or addresses of the defendant and his children in Washington, D. C., and also should have shown whether the children and he were residing at the same address and who was taking care of the children in his absence.

The Court remains of the view that the defendant could not change the children's domicile by his wrongful action in fraudulently and violently seizing the children while their domicile was in Minnesota with the mother.

Plaintiff's counsel contended that the defendant had appeared generally by making a showing with respect to custody. The Court does not consider that such a general appearance was made by this showing since the showing was incidental to the motion for summary judgment.

/s/ DANA NICHOLSON

Dated November 15, 1965.

APPENDIX C

Syllabus and Opinion of the Minnesota Supreme Court Filed April 15, 1966

No. 27½ HENNEPIN COUNTY Murphy, J.

PAMELA H. WILLMORE, *Respondent,*

40189 vs.

DANIEL E. WILLMORE, *Appellant.*

Endorsed
Filed April 15, 1966
Mae Sherman, Clerk
Minnesota Supreme Court

SYLLABUS

1. A wife who is a resident of Minnesota and who has established the domicile of her two minor children here may invoke the jurisdiction of the courts of this state to determine custody of the minor children who have been forceably removed from this state by the estranged husband, who is a nonresident, even though the wife has been un-

able to secure personal service upon the husband and does not know the precise address of the husband and children who are not in this jurisdiction. A wife should not be denied the right to invoke the jurisdiction of our courts by the conduct of the husband in removing the children from one jurisdiction to another.

2. Proceedings for summary judgment under Rule 56, Rules of Civil Procedure, comprehend that the judgment sought may be rendered if the pleadings, depositions, affidavits, etc. "show that there is no genuine issue as to any material fact and that either party is entitled to judgment as a matter of law." Where, however, such materials disclose that a genuine issue of material fact is present, the motion for summary judgment should be denied.

Affirmed.

OPINION

MURPHY, Justice.

This is an action for separate maintenance and for custody of two minor children instituted by the plaintiff wife, a resident of Minnesota, against her husband, who is a nonresident. Constructive service was obtained upon defendant by publication as provided by statute. He appeared specially and by motion for summary judgment attacked the jurisdiction of the Minnesota court. The trial court denied that motion, and pursuant to Minn. St. 605.09 (i) (L. 1965, c. 607), certified the issues presented as important and doubtful. The essential problem is whether, under the facts presented, the Minnesota court has jurisdiction to determine the right of custody of the minor children of the parties. The fact situation is unique in that the mother has established a domicile in Minnesota, the defendant is a nonresident, the minor children are not physically present in this jurisdiction, and the exact address of both the children and the defendant father has not been definitely established.

We have examined the files, together with the affidavits submitted by the parties on motion for summary judgment. It appears that prior to November 7, 1964, the parties lived together in Washington, D. C., where the husband was employed by the United States Government. On that date, without knowledge or consent of the husband, plaintiff left their home and removed the children to her mother's home in St. Louis Park, Minnesota. Upon arrival in Minnesota, she advised the father by telephone that the children were residing with her at her mother's address. The children are 2 and 3 years of age. On December 21, 1964, the defendant husband came to Minnesota with his two brothers and, by a ruse, arranged for the absence of the wife from her mother's home. They then entered the home and forceably removed the children allegedly assaulting members of the wife's family in the process. On December 23, the defendant notified the wife by telegram that the children were in Pocatello, Idaho, and a letter from him postmarked January 6, 1965, advised that they were in the Panama Canal Zone. The exact whereabouts of the defendant and the two children remains unknown to the plaintiff.

Plaintiff's affidavits would indicate that defendant has "sadistic tendencies" which made it necessary for her and the children to flee for their own physical safety. Although their domestic life has been marred by continual conflicts and difficulties, the defendant has informed the plaintiff that he will contest divorce proceedings. The defendant's affidavits assert that the wife is not emotionally stable, is not in good health, and not a fit person to have custody of the children. The conflicting charges contained in the opposing affidavits present fact issues as to domicile and the important issue of the best interests and welfare of the children.

The trial court was of the view that although the last established home of the parents was in Washington, D. C., the mother succeeded in establishing a domicile for the

children at the home of her mother in Minnesota, and that the father's wrongful conduct in removing the children from Minnesota did not defeat or change the domicile which the mother had established here. In a helpful memorandum made part of an order denying the husband's motion for a rehearing on the order denying summary judgment, the trial court expressed the view that the defendant "could not change the children's domicile by his wrongful action in fraudulently and violently seizing the children while their domicile was in Minnesota with the mother."

Difficulties arise in this case because the children are not physically present in the state and are presumably in the custody of the father, whose precise address is not known. It appears that they are located somewhere in the District of Columbia area, which might be one of several jurisdictions. Accordingly, the status of the children is beclouded by circumstances growing out of their clandestine removal or abduction from one state to another and, because of conduct of estranged parents unfettered by court decrees, the issue of jurisdiction is not easily answerable. Where there is a valid order determining custody of minor children, the authorities provide a fairly satisfactory guide as to the competing rights of parents residing in different states; but in the absence of such an order, the authorities cut in different directions depending upon the particular circumstances in each case.[1]

1. In State ex rel. Larson v. Larson, 190 Minn. 489, 252 N.W. 329, we emphasized that proceedings to determine the custody of a minor child are in the nature of an action in rem, the res being the status of the minor, and only the court of the state in which the minor is domiciled can fix or change that status. In Jacobs v. Jacobs, 136 Minn. 190, 161 N.W. 525, we noted that under rules of early common

[1] Annotation, 13 A. L. R. (2d) 306, 308; Ehrenzweig, Conflict of Laws, pp. 281 to 282 and 242, n. 23.

law the father was entitled to custody of his children as against the mother under almost all circumstances, but that (136 Minn. 194, 161 N.W. 527)—

> "• • • [t]he rule governing these relations has been gradually changing until now the rule giving the father the custody of the children as against the mother has been entirely abrogated in this state by the statutes which provides that the father and mother, unless unsuitable, 'are equally entitled to their custody and the care of their education.' G.S. 1913, § 7442."[2]

Our most helpful authority dealing with the considerations which enter into a determination of the jurisdictional right to determine custoday is found in State ex rel. Glasier v. Glasier, 272 Minn. 62, 65, 137 N.W. (2d) 549, 552. In that case, we dealt with a situation where the father had brought the children to Minnesota from the established residence of the parties in the state of Washington one day before the mother instituted a divorce action and secured an order of the court granting her custody of the children. It is unnecessary for us to again to review the large number of authorities gathered and discussed in that decision. Unlike the defendant in this case, who resorted to his own devices and forceably removed the children from this jurisdiction, the wife in the Glasier case appealed to the courts here by habeas corpus proceedings to have the children returned to her in the state of Washington, basing her right upon a valid order

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[2] Minn. St. 525.54 recognizes the parents equally as natural guardians of their minor children. Under our law, "the father and mother are the natural guardians of the minor children, and, if not unsuitable, are equally entitled to their custody." Spratt v. Spratt, 151 Minn. 458, 464, 187 N. W. 227, 229.

District of Columbia Code (1961 ed.) § 21-101, reads as follows:

"The father and mother shall be the natural guardians of the person of their minor children. If either dies or is incapable of acting, the natural guardianship of the person shall devolve upon the other."

of the Washington court granting legal custody of the children to her. We not only gave full faith and credit to the order of the Washington court but also took into consideration the manifestly superior interest of the Washington court in the family relationship and the convenience and propriety of allowing conflicting claims to be settled there. In each case the consideration of overriding importance is the welfare and best interests of the children. There is occasional recognition that courts of two or more different jurisdictions may have concurrent jurisdiction over the custody of a child. Brown v. Stevens, 118 App. D.C. 57; 331 F. (2d) 803. We gather that, in final analysis, all courts strive to act with wisdom and sincerity in matters pertaining to the welfare of the child and, by a policy of "comity," give effect to orders of foreign jurisdictions where such jurisdiction was invoked on a realistic and practical basis. Annotation, 13 A.L.R. (2d) 306; Ehrenzweig, Conflict of Laws, pp. 281 to 282; People ex rel. Halvey v. Halvey, 185 Misc. 52, 55 N.Y.S. (2d) 761, affirmed, 330 U.S. 610, 67 S. Ct. 903, 91 L. ed. 1133; White v. White, 77 N.H. 26, 86 A. 353; Boardman v. Boardman, 135 Conn. 124, 62 A. (2d) 521; Sampsell v. Superior Court, 32 Cal. (2d) 763, 197 P. (2d) 739.

It appears that the trial court was influenced by those decisions which hold that where a married woman acquires a separate domicile her domicile controls that of the minor children of the parties who live with her, and which give expression to the growing liberality of the courts in permitting the mother to establish and control the domicile of her children.

Here, the trial court felt that as a matter of right the mother should have recourse to a court in some jurisdiction to seek custody of her minor children, even though she was unable to get personal service on the defendant husband. The trial court's order denying summary judgment was keyed to his determination that the mother had in fact established the domicile of the children in Minnesota and that the abduction of the children from the state

did not change that status. Since the mother has as much right to the children as the father, there is no reason why she could not establish the domicile of her children in this state. It seems to us that in the absence of a conflicting court order from another jurisdiction, the only meaningful domicile of the children is in Minnesota, and plaintiff should have the right to invoke the jurisdiction of our courts. Certainly she should not be left helpless in face of her husband's conduct in removing the children from one jurisdiction to another. Should the mother eventually prevail, the question of whether the order of our court will be accorded full faith and credit will have to await determination when the time comes for its enforcement.

2. It is unnecessary for us to further explore the authorities at this time except to state that we should hesitate to say that on the basis of the showing made on the motion for summary judgment the trial court was in error. As we have already indicated, in this inexact and unsatisfactory area of the law, each problem should be passed upon on a case-by-case basis. Here, the facts are yet to be determined. As the trial court observed in his memorandum,

> "In this case if the defendant can establish that he and the children are now domiciled in the District of Columbia and that they lived their married lives there, then perhaps the court might later conclude that the parties should be referred to the courts of the District of Columbia for determination of custody. However, as indicated above, the defendant has not shown that he now resides in the District of Columbia and in fact has indicated this is not true."

The trial court was of the view that since the father as far as the record showed, had not established a domicile in any particular place, the mother certainly should have the right to invoke the jurisdiction of the courts in the place where she had established the domicile of the children before they were wrongfully taken by the father. In the memorandum made a part of the order denying defendant's

petition for rehearing, the trial court noted that the defendant had made a purported showing by way of affidavit that the children now resided with him in Washington, D. C., but that "[d]efendant's affidavit showing in this respect conflicts with the showing by affidavit of his counsel that the defendant's residence has been in Pocatello, Idaho." The court further said that "the defendant should have made a showing as to the actual residence address or addresses of the defendant and his children in Washington, D. C., and also should have shown whether the children and he were residing at the same address and who was taking care of the children in his absence."

It should be kept in mind that this matter has arisen in proceedings for summary judgment under Rule 56, Rules of Civil Procedure. So far as applicable here, that rule comprehends that the judgment sought may be rendered if the pleadings, depositions, affidavits, etc. "show that there is no genuine issue as to any material fact and that either party is entitled to judgment as a matter of law." Rule 56.03. Where the moving papers disclose that a genuine issue of material fact is present, the motion for summary judgment should be denied. Lindgren v. Sparks, 239 Minn. 222, 58 N.W. (2d) 317; Schoening v. United States Aviation Underwriters, Inc. 265 Minn. 119, 120 N.W. (2d) 859; Bustad v. Bustad, 263 Minn. 238, 116 N.W. (2d) 552; Minneapolis, St. P. & S. S. M. R. Co. v. St. Paul Mercury Ind. Co. 268 Minn. 390, 129 N.W. (2d) 777.

While we affirm the trial court on the ground that there was a sufficient showing to warrant that it assume jurisdiction, we do not go beyond that point since there are issues of fact to be determined, including the best interests and welfare of the children. These issues must be left for trial, and if we are to pass upon the merits of the dispute between the parties, they should be properly presented to us on appeal with a record and proper findings of fact by the trial court.

Affirmed.

APPENDIX D

Complaint for Separate Maintenance and Custody, Inter Alia

STATE OF MINNESOTA, COUNTY OF HENNEPIN
DISTRICT COURT, FOURTH JUDICIAL DISTRICT

PAMELA H. WILLMORE, 4155 Webster Avenue, St. Louis Park, Minnesota, *Plaintiff*,

v.

DANIEL E. WILLMORE, Address Unknown, *Defendant*.

COMPLAINT

Plaintiff for her cause against defendant in the above entitled action alleges that:

I.

Plaintiff and defendant are husband and wife, and were married on February 19, 1963, at Washington, District of Columbia.

II.

Plaintiff is 27 years of age and defendant is 33 years of age.

III.

There are two children issue of said marriage, Ellis Daniel Willmore, born May 12, 1963, and Christopher Edward Nelson Willmore, born May 11, 1964.

IV.

Plaintiff is a resident of the State of Minnesota.

V.

Defendant has been guilty of cruel and inhuman treatment of the plaintiff within the contemplation of Minnesota Statute 518.06 (3).

VI.

Parties hereto own their furniture, household goods, and appliances, 1960 Renault Automobile, and a 1955 M. G. Automobile.

VII.

Parties hereto own certain fractional interests in real estate, the legal description of which is unknown, but which is known to the parties as the home of Gerald Nelson Willmore, Manassas, Virginia, and the "farm" at Lava, Hot Springs, Idaho.

WHEREFORE, plaintiff prays judgment as follows:

1. Granting plaintiff a decree of judicial separation herein.

2. Awarding plaintiff custody and control of the minor children of parties herein.

3. Ordering defendant to pay to plaintiff a reasonable monthly sum as and for alimony herein.

4. Ordering defendant to pay to plaintiff a reasonable monthly sum as and for support money herein.

5. Ordering defendant to pay to plaintiff her reasonable attorneys' fees and cost of suit herein.

6. Awarding to plaintiff the parties interest in the aforesaid real estate.

7. Awarding plaintiff exclusive title and possession of the household goods, furniture, and appliances of parties herein.

8. Awarding plaintiff exclusive title and possession of the 1960 Renault Automobile and the 1955 M.G. Automobile.

9. Awarding to plaintiff such other and further relief as the Court may seem just and equitable under the circumstances.

GRATHWOL & PLOETZ

By /s/ RAYMOND C. PLOETZ
Raymond C. Ploetz
Attorneys for Plaintiff
444 Second Street
Excelsior, Minnesota

STATE OF MINNESOTA
COUNTY OF HENNEPIN } ss:

PAMELA H. WILLMORE, being first duly sworn, on oath, deposes and says that she is the plaintiff herein; that she has read the foregoing complaint and knows the contents thereof; that the same is true of her own knowledge except as is therein stated on information and belief, and as to such matters she believes them to be true.

/s/ PAMELA H. WILLMORE, *Plaintiff*

Subscribed and sworn to before me
this 27th day of March, 1965.

/s/ ROSEMARY FRITZ
Notary Public

APPENDIX E

Motion and Affidavit To Dismiss Complaint

STATE OF MINNESOTA, COUNTY OF HENNEPIN
DISTRICT COURT, FOURTH JUDICIAL DISTRICT

PAMELA H. WILLMORE, *Plaintiff*,

v.

DANIEL E. WILLMORE, *Defendant*.

NOTICE OF MOTION TO DISMISS UNDER RULE 12

To: RAYMOND C. PLOETZ, Attorney for Plaintiff:

PLEASE TAKE NOTICE That at a special term of this court to be held at 9:30 A.M. June 4, 1965, or as soon thereafter as counsel can be heard, defendant will move the court for an order dismissing the above entitled action.

Said Motion will be made on all the files, records and proceedings herein, on the affidavit of Ira C. Peterson, Jr. attached hereto and on the following grounds:

1. Lack of jurisdiction over the subject matter.
2. Lack of jurisdiction over the person of the defendant.
3. Insufficiency of process.
4. Insufficiency of service of process.
5. Failure to state a claim upon which relief can be granted.

PETERSON AND HOLTZE

By: /s/ IRA C. PETERSON, JR.
Attorneys for Defendant
765 Pillsbury Building
Minneapolis, Minnesota
55402
333-4381

STATE OF MINNESOTA, COUNTY OF HENNEPIN
DISTRICT COURT, FOURTH JUDICIAL DISTRICT

PAMELA H. WILLMORE, *Plaintiff*,

v.

DANIEL E. WILLMORE, *Defendant*.

AFFIDAVIT

STATE OF MINNESOTA
COUNTY OF HENNEPIN } ss:

IRA C. PETERSON, JR. being duly sworn on oath states he is one of the attorneys for the defendant in the above entitled action.

That the summons in the above entitled action is alleged to have been served by publication. That he is informed and believes that neither the plaintiff nor the defendant have been residents of the State of Minnesota for more than one year immediately prior to filing of the complaint herein. That he is informed and believes that until November, 1964, the parties and their children were residents of the District of Columbia. That he is informed and believes that some time in November, 1964, plaintiff came to Minneapolis, Minnesota, bringing the children of the parties with her but without the consent of defendant. That he is informed and believes that thereafter and about December, 1964, defendant came to Minnesota, obtained custody of said children and left the State of Minnesota with them. That he is informed and believes that defendant and said children are not now and since some time about December 30, 1964, have not been within the State of Minnesota. That he is informed and believes that defendant owns no property in the State of Minnesota, real or personal.

/s/ IRA C. PETERSON, JR.
Ira C. Peterson, Jr.

Subscribed and sworn to before
me this 21st day of May, 1965.

/s/ PAUL L. BILLINGS
(SEAL)

APPENDIX F

Stipulation and Notice of Motion for Partial Summary Judgment, Dated June 4, 1965

STATE OF MINNESOTA, COUNTY OF HENNEPIN
DISTRICT COURT, FOURTH JUDICIAL DISTRICT

PAMELA H. WILLMORE, *Plaintiff*,

v.

DANIEL E. WILLMORE, *Defendant*.

STIPULATION

IT IS STIPULATED between the parties through their respective counsel that defendant's attached motion for a partial summary judgment dated June 4, 1965, may be heard by the Honorable Dana Nicholson, Judge of this Court, to whom the above entitled matter was duly referred for hearing today. Receipt of a copy of said motion is hereby acknowledged.

IT IS STIPULATED that said motion for partial summary judgment is substituted in place of defendant's original motion for a dismissal under Rule 12 and that defendant, by this substitution, has not appeared generally in this matter.

Dated: June 4, 1965.

GRATHWOHL AND PLOETZ

By: /s/ RAYMOND C. PLOETZ
Attorneys for Plaintiff
444 Second Street
Excelsior, Minnesota

PETERSON AND HOLTZE

By: /s/ IRA C. PETERSON, JR.
Attorneys for Defendant
765 Pillsbury Building
Minneapolis, Minnesota 55402
333-4381

STATE OF MINNESOTA, COUNTY OF HENNEPIN
DISTRICT COURT, FOURTH JUDICIAL DISTRICT

PAMELA H. WILLMORE, *Plaintiff*,

v.

DANIEL E. WILLMORE, *Defendant*.

NOTICE OF MOTION FOR PARTIAL SUMMARY JUDGMENT

To: RAYMOND C. PLOETZ, Attorney for Plaintiff:

PLEASE TAKE NOTICE That at a special term of this court to be held at 9:30 A.M. June 4, 1965, or as soon thereafter as counsel can be heard, defendant will move the court for an order for partial summary judgment in his favor and against plaintiff with respect to Paragraphs 2, 3, 4, 5, 6, 7, 8 and 9 of the prayer for relief of plaintiff's complaint.

Said motion will be made on all the files, records and proceedings herein, on the affidavit of Ira C. Peterson, Jr. and on the following grounds:

1. Lack of jurisdiction over the subject matter.
2. Lack of jurisdiction over the person of the defendant.
3. Insufficiency of process.
4. Insufficiency of service of process.
5. Failure to state a claim upon which relief can be granted.

Dated: June 4, 1965.

PETERSON AND HOLTZE

By: /s/ IRA C. PETERSON, JR.
Attorneys for Defendant
765 Pillsbury Building
Minneapolis, Minnesota 55402
333-4381

APPENDIX G

Extract of Affidavit of Petitioner Dated October 4, 1965

STATE OF MINNESOTA, COUNTY OF HENNEPIN
DISTRICT COURT, FOURTH JUDICIAL DISTRICT

File No. 612151

PAMELA H. WILLMORE, *Plaintiff*,

v.

DANIEL E. WILLMORE, *Defendant*.

AFFIDAVIT

DISTRICT OF COLUMBIA, SS:

DANIEL E. WILLMORE, being first duly sworn, deposes and states that he is the defendant in the above-entitled action; that the plaintiff and the defendant were married in 1963; that on November 7, 1964, affiant's wife took Kevin and the two baby boys of the parties from their home at 403 Seward Square, S. E., Washington, D. C., and thereafter telephoned at approximately nine o'clock that same night to say she was at her mother's home in St. Louis Park, Minnesota and had the children with her; that she wanted affiant to sign an agreement granting her complete custody of the children, and giving affiant once-a-week visitation; she stated that she would not allow affiant to see or visit with the children until such an agreement was signed and that she wasn't interested in talking to affiant unless he was ready to sign such an agreement; affiant was also informed by plaintiff that if he came to Minnesota, she would call the police; affiant refused any such agreement and asked her what her intentions were, and plaintiff said it was none of his business and that affiant should wait and see.